

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL DIEBOLD,

Plaintiff-Appellant,

v

YOUNG BROADCASTING OF LANSING, INC.,

Defendant-Appellee.

UNPUBLISHED

April 6, 2006

No. 259520

Ingham Circuit Court

LC No. 04-000700-CZ

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

In this defamation case, plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Defendant operates WLNS-TV in Lansing. On May 20, 2003, defendant broadcast a feature on how the Lansing Catholic Diocese had hired a convicted sex offender, Nelson Graves, as a social worker despite knowing of his criminal past. Plaintiff appeared in the feature as the spokesperson for the Diocese. The tag "CONVICTED SEX OFFENDER" briefly appeared with plaintiff's image in the broadcast. At the end of the program, defendant apologized for any mislabeling of plaintiff. Plaintiff nonetheless filed suit, alleging that the broadcast defamed him. He also asserted that this material was available on defendant's website for general public viewing for three days thereafter. The trial court viewed the feature, and determined that no reasonable viewer could conclude from it that the sex-offender label applied to plaintiff.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). In reviewing a motion under MCR 2.116(C)(10), we consider the evidence of record in the light most favorable to the nonmoving party to determine if any genuine issue of material fact exists for resolution at trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

In order to prove defamation, a plaintiff must establish each of the following elements "(1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting at least to negligence on the part of the publisher, and (4) either actionability of the statement irrespective of special harm (defamation per se) or the existence of special harm caused by the publication (defamation per quod)." *Burden v Elias Bros Big Boy*

Restaurants, 240 Mich App 723, 726; 613 NW2d 378 (2000). In this case, plaintiff has not asserted that he suffered special harm, rather he asserts that the publication amounted to defamation per se. Words charging a person with the commission of a crime are defamatory per se. *Id.* at 727-728, citing MCL 600.2911(1).

The news feature in question begins with a shot of plaintiff saying, “The professionals in the field gave us their professional opinion that he was not a risk.” Appearing with plaintiff’s image, at the bottom of the screen, are the words, “CONVICTED SEX OFFENDER.” This tag is present for the few seconds that plaintiff is initially onscreen, then remains as the scene cuts to imagery, and further discussion of Graves, who is shown in a prisoner’s jumpsuit.

Because the tag remained fixed in place, beginning with plaintiff’s comments and then continuing as the focus switched more directly to Graves himself, this presentation should have suggested to most viewers that the tag applied to the person being talked about, or, at worst, that the tag inadvertently appeared prematurely. Plaintiff appears in three more brief segments of commentary, without the offending tag, in the course of which his name and affiliation are properly identified. The whole feature, which lasts just under three minutes, consistently focuses attention on Graves as the person whose criminal history had aroused concerns.

In reviewing the feature in its entirety and in context, see *Morganroth v Whitall*, 161 Mich App 785, 790; 411 NW2d 859 (1987), we agree with the trial court’s conclusion that no reasonable viewer would conclude that plaintiff was a convicted sex-offender. Where the published matter is not capable of carrying a defamatory meaning, summary disposition is appropriate. *Id.* Further, because the initial broadcast does not support a claim of defamation, the same material posted on the Internet will also not support a claim for defamation.

For these reasons, the trial court properly granted defendant’s motion for summary disposition.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio